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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,957	04/08/2004	Howard G. Dolezal JR.	CGL02/0295US1	2273

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EXAMINER	
STULII, VERA	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
11/20/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/826,957	DOLEZAL ET AL.	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-7,9-16,19-67,69 and 70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-7,9-16,19-67,69 and 70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5, 6, 9-25, 27, 34-39, 40-43, 50-52, 53-57 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al. (US 2002/0054941) in view of Paterson et al (US 2003/0180439) for the reasons as stated in the Office action mailed 04/29/2009. In regard to the newly added limitation of lightening the color of the meat due to the addition of the pH lowering agent, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as lightening of the meat color due to the addition of the pH lowering agent, this characteristic would have been expected to be as claimed absent any clear and convincing evidence and/or arguments to the contrary. The combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the lightening of color, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

Claims 7, 26, 28, 33, 48, 49, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Komarik (US 3,526,521) for the reasons as stated in the Office action mailed 04/29/2009.

Claims 29-32, 45-47 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Nakao et al (US 3,666,488) for the reasons as stated in the Office action mailed 04/29/2009.

Claim 44 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Tracy et al (US 4,576,825) or Holdren et al (US 5,736,186) for the reasons as stated in the Office action mailed 04/29/2009.

Response to Arguments

Applicant's arguments filed 07/29/2009 have been fully considered but they are not persuasive.

On page 12 top paragraph of the Reply to the Office action mailed 04/29/2009, Applicants state that "[a] solution that has been proposed in the prior art, such as in Patterson et al., is to elevate the pH of the meat by application of a pH increasing component like sodium bicarbonate, either before or after rigor mortis" (see similar argument on page 14 second paragraph of the Reply). In response to applicants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of

references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Patterson et al is not relied upon as a teaching of application of pH lowering composition. Patterson et al is relied upon as a teaching of performing a traditional pre-rigor treatment either pre-rigor mortis or post-rigor mortis.

On page 12 second paragraph of the Reply, Applicants state that "Calkins et al. describe treatment of a pre-rigor meat with citric acid or a salt thereof to enhance tenderness of the meat. Calkins et al. is only concerned with tenderness, and has nothing to do with whether a meat is from a dark-cutting carcass. The treatment composition of Calkins et al. is applied before rigor mortis (prior to the time of determining the grading pH), and therefore cannot lower the grading pH of at least a portion of the meat". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Calkins et al discloses enhancing the tenderness of dark-cutting beef by treating with a composition including citric acid or a salt thereof in an amount as claimed by applicant (claims 23-25, 27) in order to obtain a pH as clamed by applicant (claims 12-16, 20). The treatment occurs by injection, marinating or spraying and is followed by packaging of the beef. Thus, Calkins et al is relied upon as a teaching of treatment of meat with a pH lowering agent. In response to applicant's argument that "Calkins et al. is only concerned with tenderness, and has nothing to do

with whether a meat is from a dark-cutting carcass" (page 12 second paragraph, page 13 top paragraph, page 15 top and bottom paragraphs of the Reply), the fact that applicants have recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further in this regard, as stated above, although the references do not specifically disclose every possible quantification or characteristic of its product, such as lightening of the meat color due to the addition of the pH lowering agent, this characteristic would have been expected to be as claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the lightening of color, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

In response to applicants' argument that "the skilled artisan would have had strong disincentives to combine Calkins et al. with Patterson et al. in the treatment of dark cutting meat" (page 12 bottom paragraph, page 15 top and bottom paragraphs of the Reply), it is noted that since Paterson et al disclose performing a traditional pre-rigor

treatment either pre-rigor mortis or post-rigor mortis", one of ordinary skill in the art would have been motivated to modify Calkins et al and to enhance the tenderness of dark-cutting beef by treating with a composition including citric acid or a salt in order to obtain a pH as recited post-rigor mortis as taught by Paterson et al.

In response to applicant's argument that the references fail to show certain features of applicant's invention (page 13 second paragraph of the Reply), it is noted that the features upon which applicant relies (i.e., timing of meat treatment) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 14 bottom paragraph of the Reply, Applicants state that "Nakao therefore provides discussion about stabilizing an existing color, but provides no teaching or suggestion about treating a dark-cutting meat to lighten the color of the meat after it has been graded". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nakao is not relied upon as a teaching of application of pH lowering composition. Nakao is relied upon as a teaching of using a phosphate buffer in the treatment of meats.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Vera Stulii/
Examiner, Art Unit 1794